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In The

Supreme Court of the United States

October Term, 1995

CHARLES CARLISLE,

Petitioner,

vs.

UNITED STATES OF AMERICA.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit

REPLY BRIEF OF PETITIONER

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QUESTION PRESENTED

Whether a motion for judgment of acquittal brought under Federal Rule of Criminal Procedure 29(C) that is granted by the United States District Court should be overturned because it was filed eight (8) days after the jury's verdict?

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REPLY BRIEF OF PETITIONER

STATEMENT OF THE CASE

The government has attempted to advance two arguments in its statement of the case. First, the government is trying to convince this Court that there was sufficient evidence to convict the Petitioner. Second, the government is trying to argue that the district court granted the motion for judgment of acquittal because of sympathy it had for the Petitioner as a veteran of the Vietnam War. Both of these arguments are wrong for two reasons. First, the government is factually incorrect. The evidence at trial was insufficient to convict the Petitioner. The district court granted the motion for judgment of acquittal because of the insufficiency of the evidence. Second, these arguments should have no bearing on the issue before this Court, which is whether or not the district court can grant a motion for a judgment of acquittal which is filed eight (8) days after a jury's verdict.

I. THE EVIDENCE AT TRIAL WAS INSUFFICIENT TO CONVICT PETITIONER.

The district court found that there was insufficient factual evidence to convict the Petitioner. The United States Court of Appeals for the Sixth Circuit did **not** reverse the district court's finding that the evidence was insufficient. The issue of the insufficiency of the evidence was raised in the briefs filed by both parties in the United States Court of Appeals for the Sixth Circuit. The United States Court of Appeals for the Sixth Circuit ignored the issue of the insufficiency of the evidence and only found that the motion for judgment of acquittal should not have been granted by the district court because it was filed eight (8) days after the jury's verdict. As this case is presented to this Court, Petitioner Charles Carlisle is

factually innocent. The district court has found that the Petitioner is factually innocent. No court has reversed that finding.

The district court found the following:

> 1. At trial the government did not produce any evidence that the Petitioner had entered into an agreement with any member of the conspiracy. (J.A. 43)
>
> 2. During the course of hours of tape recorded conversations no conspirators suggested that the Petitioner was involved in the conspiracy. (J.A. 43)
>
> 3. There was no evidence that the Petitioner was involved in arranging the transport of the marijuana to Michigan. (J.A. 43)
>
> 4. Prior to actually coming to Michigan the government's chief witness, Thomas Crawford, testified he had never heard of the Petitioner. (J.A. 44)
>
> 5. There was no evidence to indicate that the Petitioner was to benefit monetarily, or in any other way, from the alleged conspiracy. (J.A. 44)

The district court specifically held that "the government's case against Charles Carlisle is insufficient to prove beyond a reasonable doubt that Carlisle knowingly and voluntarily joined the conspiracy." (J.A. 44) There has been no finding by any court that the district court's decision on this matter was wrong.

II. THE DISTRICT COURT DID NOT GRANT THE PETITIONER'S MOTION FOR JUDGMENT OF ACQUITTAL BECAUSE THE PETITIONER HAD RECEIVED THE BRONZE STAR FOR HIS MILITARY SERVICE IN THE VIETNAM WAR.

Petitioner Charles Carlisle received the Bronze Star for his service during the Vietnam War. (J.A. 35) The government, in its brief, attempts to use this award against the Petitioner. The government implies in its brief that the district court had improper sympathy for the Petitioner because of his status as a veteran of the Vietnam War. This is incorrect. On August 19, 1993 the district court initially denied the motion for judgment of acquittal filed by the Petitioner. One day later, on August 20, 1993, the United States Court of Appeals for the Sixth Circuit decided the case of *United States v Jenkins*, 4 F.3d 1338 (6th Cir. 1993). The district court specifically relied upon this new case, decided after the Petitioner's motion for judgment of acquittal had been initially denied, in granting the motion for judgment of acquittal on October 14, 1993. The district court followed *Jenkins* for the proposition that the district court's inquiry should consist of two questions. First, the district court should analyze what the co-conspirator could reasonably foresee. Second, even if the co-conspirator could reasonably foresee the quantity of drugs, the district court should determine if the co-conspirator joined the conspiracy for the entire quantity of the drugs. (J.A. 28) Although it is certainly true that the Petitioner was honorably discharged from the United States Army after serving nearly 12 months in the Vietnam War and receiving the Bronze Star, the district court decided this case based upon the evidence and based upon the subsequent case of *Jenkins*.

The issue before this Court is not, as implied in the government's brief, whether or not there was sufficient evidence to convict the Petitioner or whether the district court had sympathy for the Petitioner because he was

awarded the Bronze Star for his service during the Vietnam War. The issue before this Court is whether or not the district court had the authority to consider and grant a motion for judgment of acquittal filed eight (8) days after the jury's verdict.

ARGUMENT

I. THE DISTRICT COURTS HAVE THE AUTHORITY TO ENTER AN ORDER OF ACQUITTAL SUA SPONTE UNDER FEDERAL RULE OF CRIMINAL PROCEDURE 29(a).

The district court initially denied the Petitioner's untimely motion for judgment of acquittal. That motion for judgment of acquittal was not renewed by the Petitioner. The district court subsequently, on its own, granted the motion for judgment of acquittal based upon new judicial authority, the case of *United States v Jenkins*. *Jenkins* was not cited in the Petitioner's motion. The district court's action, in granting the motion for judgment of acquittal prior to sentencing and without a renewed motion by the Petitioner, was similar to a sua sponte entry of a judgment of acquittal. This Court should determine whether a district court has the authority to enter a judgment of acquittal after the seven (7) day period for filing a motion has expired.

The government, in its brief, takes the position that the district court lacks the jurisdiction to grant a judgment of acquittal to an actually innocent criminal defendant based solely on the expiration of the defendant's deadline for filing a motion for judgment of acquittal. If there is new legal authority, which is discovered by the district court more than eight (8) days after the jury's verdict is entered, but before the district court sentences a defendant, the district court should be able to utilize that authority to determine whether or not the defendant is actually innocent. The government's argument, followed

to its logical conclusion, means that if a controlling case is decided eight (8) days after a jury's verdict which completely changes the state of the law and would require the district court to find the defendant innocent, the district court would have no authority, either on a motion or sua sponte, to utilize the new authority and to make an appropriate decision. The district court would have to go through the futile exercise of sentencing the defendant. The defendant would then have to file an appeal. This absurd result unnecessarily burdens the criminal justice system.

Federal Rule of Criminal Procedure 29(c) constrains the defendant. Rule 29(c) does not constrain the district court. Rule 29(c) states that the defendant's motion must be made or renewed within seven (7) days. It does not say anything about when the district court may grant a judgment of acquittal. Nothing in Rule 29(c) limits the district court's inherent authority to take action sua sponte. The district court has jurisdiction until after a defendant is sentenced. There is no reason why the district court should be limited to granting a judgment of acquittal sua sponte more than seven (7) days after the jury's verdict just because that is the amount of time a defendant has to file a motion. Rule 29(c) does not limit the district court's ability to act on a defendant's motion after seven (7) days. It is not logical to contend that Rule 29(c) prevents the district court, if it is acting sua sponte, from entering an order of acquittal more than seven (7) days after the jury's verdict.

Rule 29(a) provides that a court on "its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment or information after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses." The government attempts to claim that Rule 29(a) is strictly limited to the period prior to submitting the case to the jury. Nothing in Rule 29(a), except for the heading of the subsection, supports the government's

position. Under Rule 29(a) the district court has the power, even beyond seven (7) days after the jury's verdict, to sua sponte grant a judgment of acquittal to make certain that a factually innocent individual is not convicted.

The government attempts to argue that under *United States v Smith*, 331 U.S. 469 (1947), the district court cannot sua sponte act outside the time limits set forth in the Federal Rules of Criminal Procedure. *Smith* is easily distinguishable from this case. First, in *Smith* the motion for a new trial had been granted after sentencing and after appeal. In this case, the motion for judgment of acquittal was granted prior to sentencing. In *Smith*, the district court, by granting the defendant a new trial, attempted to reverse the affirmance of the conviction by the United States Court of Appeals. Second, in *Smith* there was no claim that the defendant was actually innocent of the crime charged. In this case the district court has found that the Petitioner is factually innocent.

The argument that under Rule 29(a) the district court retains authority to sua sponte grant an innocent defendant a judgment of acquittal, at least until sentencing, is consistent with the language of Rule 29(a), and the policies and rationale behind the rule. "(T)he Rules are not, and were not intended to be, a rigid code to have an inflexible meaning irrespective of the circumstances." *Fallen v United States*, 378 U.S. 139, 142 (1964). Even though the Petitioner's motion in this case was filed one (1) day late, the district court granted the motion largely based upon *Jenkins* which was decided one (1) day after the district court initially denied the motion for judgment of acquittal. The district court had the authority to do this, sua sponte, under Rule 29(a) even if a motion had not been filed by the Petitioner. Even if this Court accepts the position of the government that the time limits under Rule 29(c) are mandatory for motions filed by a defendant, the district court has the residual authority to grant a judgment of acquittal sua sponte prior to sentencing.

Therefore, this Court should hold, based upon the facts of this case, that even if the district court does not have the jurisdiction to entertain a motion for a judgment of acquittal filed eight (8) days after a jury's verdict, the district court does have the power under Federal Rule of Criminal Procedure 29(a) to grant a judgment of acquittal sua sponte prior to sentencing.

II. THE DISTRICT COURTS HAVE INHERENT SUPERVISORY POWER TO ACT OUTSIDE THE FEDERAL RULES OF CRIMINAL PROCEDURE TO MAKE SURE THAT INNOCENT DEFENDANTS RECEIVE FAIR TRIALS.

The government, in its Brief, has principally relied on *United States v Robinson*, 361 U.S. 220 (1960). In *Robinson*, this Court held that the timely filing of a notice of appeal is mandatory and jurisdictional. In this case, unlike *Robinson*, the district court had jurisdiction at the time it decided the motion for judgment of acquittal. The Petitioner had not yet been sentenced. There should be no question that the district court in this case had jurisdiction at the time it granted the motion for judgment of acquittal. Unlike *Robinson*, the issue now before this Court is whether or not the motion for judgment of acquittal, filed one day late, should have been considered by the district court.

In *Robinson*, the defendants had filed a notice of appeal twenty-one (21) days after the judgment. The government filed a motion to dismiss because the notice of appeal was not filed within ten (10) days after the entry of the judgment as required by Federal Rule of Criminal Procedure 37(a). This Court limited its inquiry to the following question:

> The single question presented is whether the filing of a notice of appeal in a criminal case after expiration of the time prescribed in Rule 37(a)(2) confers jurisdiction of the appeal upon

> the Court of Appeals if the District Court, proceeding under Rule 45(b), has found that the late filing of the notice of appeal was the result of excusable neglect. 361 U.S. at page at 284.

Federal Rule of Criminal Procedure 45 provides that the court cannot enlarge the period for taking an appeal. In *Robinson*, this Court looked at the legislative history of Rule 45(b) and found that nothing within the history of that rule would support the position that the court of appeals has jurisdiction of an appeal when there is a late filing of a notice of appeal as a result of excusable neglect. Rule 45(b) provides that when an act is required to be done within a specified period of time the district court has discretion to enlarge that period of time if the request is made before the expiration of the period originally prescribed or if the request is made upon motion after the expiration of the specified period if the failure to act was the result of excusable neglect. Under Rule 45(b) the district court may not extend the time for taking any action under Rule 29.

Robinson was decided in 1960. This Court has limited the applicability of *Robinson* in several cases decided since then. In *Harris Truck Lines, Inc. v Cherry Meat Packers, Inc.*, 371 U.S. 215 (1962), the petitioner's motion for a new trial had been denied on June 28, 1961. Local trial counsel was present at the motion for new trial. The petitioner's general counsel had been vacationing in Mexico at the time of the motion for new trial. The petitioner's general counsel returned to the country on July 20, 1961. On July 13, the petitioner's local counsel asked the district court for an extension of time to appeal beyond the thirty (30) day limit then set forth in Federal Rules of Civil Procedure 73(a). The district court granted an extension to August 11, 1961. The notice of appeal was filed on August 11, 1961. The court of appeals dismissed the appeal holding that there was not basis to waive the thirty (30) day limit because a showing of excusable neglect based upon the failure of a party to learn about

the entry of the judgment had not been made out. This Court, while recognizing that the standard was that the moving party had to show "excusable neglect based on the failure of a party to learn of the entry of the judgment", reinstated the appeal and held as follows:

> In view of the obvious great hardship to a party who relies upon the trial judge's finding of "excusable neglect" prior to the expiration of the 30-day period and then suffers reversal of the finding, it should be given great deference by the reviewing court. Whatever the proper result as an initial matter on the facts here, the record contains a showing of unique circumstances sufficient that the Court of Appeals ought not to have disturbed the motion judge's ruling. The judgment is vacated and the case is remanded to the Court of Appeals so that petitioner's appeal may be heard on its merits. 371 U.S. at page 285.

In *Harris Truck Lines*, the petitioner knew of the entry of the judgment. On June 28, 1961, the petitioner's local counsel was present when the motion for a new trial was denied. Despite the fact that the strict language of the rule was not complied with, this Court found that under a "showing of unique circumstances" the court of appeals should not have disturbed the district court's ruling.

In *Thompson v Immigration and Naturalization Service*, 375 U.S. 384 (1964), the final order in the district court had been entered on April 18, 1962. Twelve (12) days later the petitioner served notice that he would be filing post-trial motions including a motion for new trial. The motions were denied. The petitioner filed a notice of appeal within sixty (60) days of the denial of the post-trial motions but not within sixty (60) days of the original entry of the final judgment by the district court. The post-trial trial motions were not timely filed because they were not served within ten (10) days of the entry of the final judgment. Federal Rule of Civil Procedure 73(a) provides

that an appeal can only be taken within sixty (60) days from the entry of a final judgment or an order entered after a timely motion for new trial. This Court looked beyond the specific language of the rule and held that under the unique circumstances of the case the petitioner's appeal should be heard on the merits.

The facts of this case present unique circumstances similar to those in *Thompson* and *Harris Truck Lines*. The Petitioner's motion was filed one day late. The Petitioner's motion was filed when the district court retained jurisdiction. The Petitioner's motion was filed prior to sentencing. The district court heard and decided the motion prior to sentencing. The district court found that the Petitioner was legally innocent. New case law was available to the district court after the seven (7) days had expired. The motion was untimely because of a court appointed attorney's error. Under these unique circumstances, this Court should find that the district court did have the authority to hear and decide the Petitioner's motion for judgment of acquittal.

If this Court were to adopt the government's argument and apply the rationale of *Robinson* to the facts of this case, the Petitioner would only be left with a collateral attack on the jury's verdict. It is preferable that the district court directly decide the issue of the sufficiency of the evidence as opposed to having the matter decided on appeal or by collateral attack. In *Bartone v United States*, 375 U.S. 52 (1964), this Court stated:

> Where state procedural snarls or obstacles preclude an effective state remedy against unconstitutional convictions, federal courts have no other choice but to grant relief in the collateral proceeding. See *Fay v Noia*, 372 U.S. 391, 83 S.Ct. 822, 9 L.Ed.2d 837. But the situation is different in federal proceedings, over which both the Courts of Appeals and this Court (*McNabb v United States*, 318 U.S. 332, 63 S.Ct. 608, 87 L.Ed. 819) have broad powers of supervision. It is

> more appropriate, whenever possible, to correct errors reachable by the appeal rather than remit the parties to a new collateral proceeding. 375 U.S. at page 54.

The government is asking this Court to strictly apply *Robinson* to the facts of this case. The government argues that the Petitioner should be required to file a motion under 28 U.S.C. § 2255 or to file an appeal. Under either alternative, there is an increased burden on the criminal justice system. It would be preferable to have the issue of the sufficiency of the evidence decided by the district court, rather than have the further burden of an additional appeal, or an additional hearing on a motion filed pursuant to 28 U.S.C. § 2255. In *Oscar Meyer & Co. v Evans*, 441 U.S. 750, 765 (1979), this Court stated that "to require a second 'filing' by the aggrieved party after termination of state proceedings would serve no purpose other than the creation of an additional procedural technicality." In this case, the second filing, whether an appeal or a motion under 28 U.S.C. § 2255 serves no purpose. It would be an additional procedural technicality. An additional filing creates a greater burden on the system.

The government also relies upon the cases of *United States v Hastings*, 461 U.S. 499 (1983) and *Bank of Nova Scotia v United States*, 487 U.S. 250 (1988), for its argument that a district court may not exercise its supervisory power if the exercise of that power would conflict with the Federal Rules of Criminal Procedure. Neither of these cases deals with a circumstance where a rule of procedure directly impairs an important value like avoiding the wrongful conviction of an innocent man. Both of these cases involve harmless error principles under Federal Rule of Criminal Procedure 52. In *Hastings* and *Bank of Nova Scotia* the use of the supervisory power to correct a mistake did not have substantial prejudicial impact on the defendant. The supervisory power of the federal courts is most important where, as here, the supervisory

power is used to prevent a clear miscarriage of justice. There is much less reason to invoke the supervisory power of the federal courts where the power is used only to correct errors that do not have substantial effect on the outcome of the proceedings.

In *Hastings*, this Court held that one of the purposes underlying the supervisory power of the federal courts is "to preserve judicial integrity by ensuring that a conviction rests on appropriate considerations validly before the jury". 461 U.S. at page 505. In this case, the district court has found the evidence insufficient to convict the Petitioners, yet, as the Petitioner comes before this Court, he has been determined guilty. The supervisory power of the federal courts should be invoked under these facts to avoid this result.

The government in its brief does not address the case of *United States v Gaca*, 411 U.S. 618 (1973). In *Gaca*, unlike *Hastings* and *Bank of Nova Scotia*, a mistake was made which had a substantial prejudicial impact on the defendant. The defendant's appeal was dismissed because of his failure to pay a twenty-five ($25) dollar filing fee. The government agreed that it was appropriate "to reinstate the appeal in the exercise of this Court's supervisory power". *Id.*

In footnote 21 of its brief, the government suggests that the supervisory power of the federal courts derives from Article III of the Constitution. If the federal court's supervisory power derives from Article III of the Constitution then it cannot be limited by the Federal Rules of Criminal Procedure. Where the supervisory power is used to protect an innocent person from a wrongful conviction it cannot be limited by procedural rules. The supervisory power of the district courts, inherent in Article III of the Constitution, should relieve an actually innocent defendant from procedural rules that would otherwise restrict the district court's ability to hear and decide his or her claim.

This Court has held that once a reviewing court obtains jurisdiction of one issue in a case it may consider questions arising in other stages of the case. *Mercer v Theriot*, 377 U.S. 152 (1964); *Urie v Thompson*, 337 U.S. 163 (1950). In this case the district court retained jurisdiction over the defendant because he had not yet been sentenced. The district court should have had the authority to decide the motion for judgment of acquittal. This Court should hold that the mistake of an attorney in filing a motion for a judgment of acquittal one (1) day late, when the defendant is legally innocent, constitutes unique circumstances within the meaning of *Thompson* and *Harris Truck Lines*.

III. THE RATIONALE BEHIND THE TIME LIMIT ESTABLISHED IN FEDERAL RULE OF CRIMINAL PROCEDURE 29(C), TO PREVENT HAVING A TRIAL JUDGE DECIDE A MOTION FOR JUDGMENT OF ACQUITTAL AFTER A CONSIDERABLE PERIOD OF TIME HAS PASSED AND THE TRIAL JUDGE MAY NOT REMEMBER THE PARTICULAR FACTS OF THE TRIAL, DOES NOT APPLY TO THE FACTS OF THIS CASE WHERE THE MOTION FOR JUDGMENT OF ACQUITTAL WAS FILED EIGHT (8) DAYS AFTER THE TRIAL.

In its brief the government argues for a strict interpretation of the Federal Rules of Criminal Procedure. In support of its position that an actually innocent defendant, whose court-appointed attorney files a motion for judgment of acquittal one day late, should be denied an opportunity to have the trial judge decide the motion, the government relies on the following quote from *United States v Smith*, 331 U.S. 469, 476 (1947):

> On the contrary, as time passes, the peculiar ability which the trial judge has to pass on the fairness of the trial is dissipated as the incidents and nuances of the trial leave his mind to give

> way to immediate business. It is in the interest of justice that a decision on the propriety of a trial be reached as soon after it has ended as is possible, and that decision not be deferred until the trial's story has taken on the uncertainty and dimness of things long past.

The trial's story had not taken on the "uncertainty and dimness of things long past" in this case. The motion for judgment of acquittal was filed eight (8) days after the jury's verdict. In *Smith*, the motion for new trial was granted after appeal. In this case, the motion for a judgment of acquittal was granted prior to sentencing. In *Harris v Nelson*, 394 U.S. 286, 300 (1969), this Court stated:

> We do not assume that courts in the exercise of their discretion will pursue or authorize pursuit of all allegations presented to them. We are aware that confinement sometimes induces fantasy which has its basis in the paranoia of prison rather than in fact. But where specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is confined illegally and is therefore entitled to relief, it is the duty of the court to provide the necessary facilities and procedures for an adequate inquiry. Obviously, in exercising this power, the court may utilize familiar procedures, as appropriate, whether these are found in the civil or criminal rules or elsewhere in the "usages and principles of law."

This is a case where the Petitioner's confinement was illegal because he was found innocent by the district court. The supervisory power of the district courts should be utilized to allow the motion, filed eight (8) days after the jury's verdict, to be heard by the district judge. This is consistent with the rationale behind *Smith*.

This Court applied the Federal Rules of Appellate Procedure flexibly in the case of *Houston v Lack*, 487 U.S.

266 (1988). A state prisoner had filed a petition for habeas corpus relief. Twenty-seven (27) days after the judgment was entered in district court dismissing the habeas corpus petition, the petitioner deposited a notice of appeal with prison authorities before mailing it to the district court. The district court stamped the notice indicating it was filed thirty-one (31) days after the judgment was entered. This was one (1) day after the expiration of the thirty (30) day filing period for taking appeals under Federal Rule of Appellate Procedure 4(a)(1). This Court held that the notice of appeal was filed at the moment of delivery to prison authorities even though the clear language of Federal Rule of Appellate Procedure 4(a)(1) provides that the notice of appeal "shall be filed with the district court within thirty days". Although the language of Federal Rules of Appellate Procedure 4(a)(1) is clear, this Court looked beyond the strict requirements of the Rule to the rationale behind the Rule. This Court found that the rationale behind the Rule would not be carried out by applying the Rule to the facts of that particular case. That same reasoning should be applied to this case. The rationale behind the time limit established in Federal Rule of Criminal Procedure 29(c), as set forth in *Smith*, is to prevent a trial judge from deciding a motion for judgment of acquittal after a considerable period of time has passed and the trial judge may not remember the particular facts of the trial. The rationale behind the rule does not apply to the facts of this case where the motion for judgment of acquittal was filed eight (8) days after the jury trial.

The government contends that a strict interpretation of Federal Rule of Criminal Procedure 29(c) will not work an injustice because the Petitioner can appeal, under a plain error standard, or the Petitioner can file a motion under 28 U.S.C. § 2255. It will be difficult for the Petitioner to obtain relief under either one of those avenues. If the Petitioner appeals, a plain error standard would be applied. In *United States v Frady*, 456 U.S. 152, 166 (1982),

this Court reaffirmed "the well-settled principle that to obtain collateral relief a prisoner must clear a significantly higher hurdle than would exist on direct appeal." There is a significant risk that no relief can be obtained by the Petitioner once this case leaves the hands of the district court judge.

Even if the government was correct in its assertion that there are other avenues of review available, requiring the Petitioner to appeal or file a motion under 28 U.S.C. § 2255 is incredibly wasteful and inefficient. The district judge is in the best institutional position to evaluate the sufficiency of the evidence claim. The United States Court of Appeals should not be deprived of the district court's decision and review of the evidence.

IV. THE DISTRICT COURTS HAVE THE POWER TO GRANT AN UNTIMELY MOTION FOR JUDGMENT OF ACQUITTAL UNDER 28 U.S.C. § 1651.

The government contends in its brief that the All Writs Act does not apply to the facts of this case. The All Writs Act "has served since its inclusion, in substance, in the original Judiciary Act as a 'legislatively approved source of procedural instruments designed to achieve the rational ends of the law' ". *Harris v Nelson*, 394 U.S. 286, 299, (1969), quoting *Price v Johnston*, 334 U.S. 266, 282 (1948). "A federal court may avail itself of all auxiliary writs as aids in the performance of its duties, when the use of such historic aids is calculated in its sound judgment to achieve the ends of justice entrusted to it." *Adams v United States ex rel. McCann*, 317 U.S. 269, 273 (1942).

The All Writs Act should be flexibly applied. In *United States v New York Telephone Company*, 434 U.S. 159, 172 (1977), this Court stated:

> The Court has consistently applied the Act flexibly in conformity with these principles. Although § 262 of the Judicial Code, the predecessor to § 1651, did not expressly authorize

> courts, as does § 1651, to issue writs "appropriate" to the proper exercise of their jurisdiction but only "necessary" writs, *Adams* held that these supplemental powers are not limited to those situations where it is "necessary" to issue the writ or order "in the sense that the court could not otherwise physically discharge its appellate duties." 317 U.S., at 273, 63 S.Ct., at 239. In *Price v Johnston, supra*, § 262 supplied the authority for a United States Court of Appeals to issue an order commanding that a prisoner be brought before the court for the purpose of arguing his own appeal. Similarly, in order to avoid frustrating the "very purpose" of 28 U.S.C. § 2255, § 1651 furnished the District Court with authority to order that a federal prisoner be produced in court for purposes of a hearing. *United States v Hayman*, 342 U.S. 205, 220-222 (1952). The question in *Harris v Nelson, supra*, was whether, despite the absence of specific statutory authority, the District Court could issue a discovery order in connection with a habeas corpus proceeding pending before it. Eight Justices agreed that the district courts have power to require discovery when essential to render a habeas corpus proceeding effective.

This Court should hold that under the All Writs Act the district court had the authority to go outside the seven (7) day requirement of Federal Rule of Criminal Procedure 29(c). The rational ends of the law will be achieved if the Petitioner's motion for judgment of acquittal can be considered by the district court under the authority of the All Writs Act. The use of the All Writs Act to allow the district court to decide a motion for judgment of acquittal filed eight (8) days after a jury's verdict and before sentencing will achieve the ends of justice. One of the goals of the Federal Rules of Criminal

Procedure is to have a rational and efficient justice system. It would not be rational or efficient to hold that a district court, prior to sentencing, cannot decide a motion for judgment of acquittal on the basis that a defendant is actually innocent. There was no prejudice to the United States of America in this case. To require a defendant to appeal his conviction, even though the district court has found that he is actually innocent, is not efficient or rational. The defendant, because of his or her court-appointed attorney's error, would be denied a hearing on the motion in front of the district judge who heard all of the evidence. Even if the court of appeals does find in the defendant's favor, the system will have been unduly burdened by an additional appeal that should not have been required, In addition, the defendant faces the burden of convincing three judges on the court of appeals that the jury's decision was against the great weight of the evidence, without the benefit of having the decision of the district court who heard all of the testimony in the case.

In *Adams v United States*, 317 U.S. 269 (1942), this Court recognized that the federal courts have the power to issue a writ under the All Writs Act "where it may be necessary for the exercise of a jurisdiction already existing." 317 U.S. at page 273. In this case, the district court had jurisdiction because it granted the motion for judgment of acquittal prior to sentencing. After sentencing, the district court would no longer have jurisdiction and, therefore, it could not have exercised its power to grant a motion for judgment of acquittal under the All Writs Act.

This Court should rule that district courts, prior to sentencing, have the power to consider a motion for a judgment of acquittal where there is a claim that the defendant was actually innocent and the motion was not timely filed because of an attorney's error. In *Adams*, this Court stated that "procedural instruments are means for achieving the rational ends of law." 317 U.S. at page 273. Rule 29(c) must be viewed in this light. Where, as in this case, a strict reading of the rule may result in an irrational

result, the All Writs Act should be invoked by the district court "in its sound judgment to achieve the ends of justice entrusted to it." 317 U.S. at page 273. The most rational result in this case, which achieves the ends of justice, is to allow the district court to decide the motion for judgment of acquittal filed prior to sentencing, rather than having the matter appealed or be the subject of a motion under 28 U.S.C. § 2255.

An analogy can be made to the importance that this Court has placed upon providing access to the courts in the context of habeas corpus petitions. In *Harris v Nelson*, 394 U.S. 286, 291 (1969), this Court stated "the very nature of the Writ [of habeas corpus] demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice . . . are surfaced and corrected." In *Hensley v Municipal Court*, 411 U.S. 345, 350 (1973), this Court stated "we have consistently rejected interpretations of the habeas corpus statute that would suffocate the Writ in stifling formalism or effectiveness with the manacles of arcane and scholastic procedural requirements".

Petitioner Charles Carlisle should be allowed to have the district court decide his motion for a judgment of acquittal. The only reason the district court has been prevented from deciding his motion for judgment of acquittal is because his court-appointed attorney made a mistake and filed the motion for judgment of acquittal one day late. This Court should fashion a remedy so that Petitioner Charles Carlisle is not punished for his attorney's error. It is fair, rational and just that the district court should be allowed to hear and decide the motion for judgment of acquittal.

CONCLUSION

The judgment of the United States Court of Appeals for the Sixth Circuit should be reversed and the judgment of the United States District Court for the Western District of Michigan dated October 28, 1993 should be reinstated.

Respectfully submitted,

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